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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

UNITED REPUBLIC OF TANZANIA

1. The Committee considered the second periodic report of Tanzania (CCPR/C/42/Add.12) at its 1188th to 1190th meetings, held on 20 and 21 October 1992 and adopted* the following comments:

A. Introduction

2. The Committee compliments the State party on the high quality of its report. In addition to giving the relevant laws and regulations, the report contains detailed information on actual practice and the factors and difficulties affecting the implementation of the Covenant. The Committee notes with satisfaction that the report includes a candid appraisal of existing legislative deficiencies in the lights of the relevant General Comments adopted by the Committee. The Committee, however, regrets that the report was submitted after a delay of some five years and expects that, given the reporting experience which the State party has now acquired, similar delays will not occur in the future.

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* At the 1203rd meeting (forty-sixth session), held on 5 November 1992.

3. The Committee observes that answers provided by the delegation to the numerous questions raised by members of the Committee greatly contributed in the consideration of the report and in establishing a constructive dialogue.

B. Positive aspects

4. The Committee welcomes the measures undertaken by the State party and the substantive progress recently achieved toward democratization, which should provide a more effective legal framework for the effective application of the Covenant. The Committee also notes with satisfaction that a bill of rights has been incorporated into the constitution; that political parties are now being registered under a multi-party system and that the first multi-party elections to the National Assembly and to the Presidency have been scheduled; and that a more important role is foreseen for the Judiciary in the protection of human rights.

C. Factors and difficulties impeding the application of the Covenant

5. The Committee notes that some aspects of democratic reform may have been adversely affected by structural adjustment policies tending to decrease the resources available for implementing those reforms. At the same time, the Committee underlines that this does not exempt the State party from the full and effective application of the Covenant.

D. Principal subjects of concern

6. While welcoming the wide-ranging political and legal reforms in progress, the Committee recognizes that the transition to true democracy is far from complete. A number of gaps still need to be addressed regarding present legislation and the guarantees provided for under the Covenant. The Committee emphasizes that, in undertaking any review of existing national law and in formulating new legislation and administrative rules, a primary consideration should be compatibility with the provisions of the Covenant.

7. The Committee is concerned over the unclear position of the Covenant in national law, particularly in cases where conflicts could arise between the Covenant and the Constitution. In this regard, article 32 of the Constitution regarding emergencies is clearly not in conformity with the international obligations of the State party under article 4 of the Covenant. Under that provision no derogation is permissible from certain fundamental rights, among which is the right to life. The Committee is concerned that the grounds for declaring a state of emergency are too broad and that the extraordinary powers of the President in an emergency are too sweeping. Other concerns of the Committee in regard to specific provisions of the Constitution which are incompatible with the Covenant include article 30 (1) which provides a wide scope for limitations of rights and freedoms and article 25 which provides for the possibility of forced labour.

8. Other areas of concern include the unavailability of statistics concerning the application of the death penalty; the extraordinary powers accorded to the President with regard to preventative detention; the extent of delays with regard o the scheduling of criminal proceedings; the restriction of the right to peaceful assembly by the requirement of pre-permission by

local authorities; insufficient publicity given to the Covenant with the result that the general public may not be informed of the protections afforded under it; continuing inequality with regard to the status of women; and the continued use of corporal punishment, the application of which the Committee considers to be degrading and inhuman treatment.

9. Additionally, the Committee is concerned that some aspects of the customary law which are still being applied in many of the lower courts may not be in compliance with the provisions of the Covenant.

E. Suggestions and recommendations

10. The Committee recommends that the State party should provide a clear legal basis for giving full effect to the provisions of the Covenant. The Committee further suggests the enactment of legislation to provide that customary law, which is incompatible with the provisions of the Covenant, is null and void.

11. The Committee recommends the amendment of those provisions of the Constitution and other national law which are not in conformity with the Covenant. In particular, the Committee suggests that a thorough review be undertaken of provisions relating to states of emergency with a view to ensuring their full compatibility with article 4 of the Covenant in all respects. The Committee affirms the vital role played by the responsible exercise of the freedom of expression in the transition to democracy and recommends that the State party ensure that the exercise of this right is fully respected. Steps should also be taken to guarantee freedom of assembly without the requirement for pre-permission or such other restrictions as may jeopardize the freedom in question without necessarily being a threat to public order. Ongoing and active monitoring should be undertaken to ensure that democratic guarantees which have recently been established in law are observed in practice. To this end, the Committee considers that an active and independent judiciary is indispensable and recommends that measures be undertaken in this regard to further strengthen it.

12. The Committee considers that active measures should be undertaken to ensure that the provisions of the Covenant are made widely known to the general public and, in particular, to members of the judiciary and the legal and other professions most directly concerned with its application. Both Covenants should be translated into the national language, Swahili, and integrated into educational curricula at all levels. Although welcoming the improvements made with respect to ensuring equal opportunity for women, the Committee notes that the situation still warrants further progress, particularly in relation to property and inheritance rights and questions concerning parental authority.

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